

**TRANSMITTAL AND NOTICE OF APPROVAL OF
STATE PLAN MATERIAL**

1. TRANSMITTAL NUMBER:
TN 03-018

2. STATE
Ohio

OR: CENTERS FOR MEDICAID AND MEDICAID SERVICES

3. PROGRAM IDENTIFICATION: TITLE XIX OF THE
SOCIAL SECURITY ACT (MEDICAID) Title XIX

O: REGIONAL ADMINISTRATOR
HEALTH CARE FINANCING ADMINISTRATION
DEPARTMENT OF HEALTH AND HUMAN SERVICES

4. PROPOSED EFFECTIVE DATE
July 1, 2003

TYPE OF PLAN MATERIAL (Check One):

☐ NEW STATE PLAN ☐ AMENDMENT TO BE CONSIDERED AS NEW PLAN ☒ AMENDMENT

COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (Separate Transmittal for each amendment)

6. FEDERAL STATUTE/REGULATION CITATION:
Section 1902 (a)(13)(A) of the Social Security Act

7. FEDERAL BUDGET IMPACT:
a. FFY 2003 (\$ 19,708,050)
b. FFY 2004 (\$ 79,368,200)

8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT:

9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION
OR ATTACHMENT (If Applicable):

Attachment 4.19D rules: 5101:3-3-57
5101:3-3-82.3
5101:3-3-90 (new)

Attachment 4.19D rule: 5101:3-3-57
5101:3-3-82.3

10. SUBJECT OF AMENDMENT:

These rules were implemented as an integral part of Ohio's SFY 2004-2005 budget contained in Substitute House Bill
5 of the 125th General Assembly.

11. GOVERNOR'S REVIEW (Check One):

☐ GOVERNOR'S OFFICE REPORTED NO COMMENT
☐ COMMENTS OF GOVERNOR'S OFFICE ENCLOSED
☐ NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL

x OTHER, AS SPECIFIED:

12. SIGNATURE OF STATE AGENCY OFFICIAL:

13. TYPED NAME:

Thomas J. Hayes

14. TITLE:

Director

15. DATE SUBMITTED:

September 25, 2003

16. RETURN TO:

Becky Jackson
Bureau of Health Plan Policy
Ohio Department of Job and Family Services
30 East Broad Street, 27th floor
Columbus, Ohio 43215-3414

FOR REGIONAL OFFICE USE ONLY

17. DATE RECEIVED:

SEP 26 2003

18. DATE APPROVED:

APR - 5 2004

PLAN APPROVED - ONE COPY ATTACHED

19. EFFECTIVE DATE OF APPROVED MATERIAL:

JUL - 1 2003

21. TYPED NAME:

Charlene Brown

20. SIGNATURE OF REGIONAL OFFICIAL:

22. TITLE:

Deputy Director, CMSO

23. REMARKS:

5101:3-3-57 Nursing facilities (NFs) expenditure limitation.

Notwithstanding rules 5101:3-3-40 to 5101:3-3-59 of the Administrative Code, "total per diem rate" includes the payments made to NFs under rule 5101:3-3-58 of the Administrative Code. Rates paid to NFs under the medicaid program shall be subject to the following limitations:

- (A) For fiscal year 2002, the mean total per diem rate for NFs in the state, weighted by medicaid days and calculated as of July 1, 2001, excluding providers of outlier services, under rules 5101:3-3-40 to 5101:3-3-59 of the Administrative Code, shall not exceed one hundred forty-three dollars and ninety-two cents.
- (B) For fiscal year 2003, the mean total per diem rate for all NFs in the state, weighted by medicaid days and calculated as of July 1, 2002, excluding providers of outlier services, under rules 5101:3-3-40 to 5101:3-3-59 of the Administrative Code, shall not exceed one hundred fifty-three dollars and forty-one cents, plus any difference between one hundred forty-three dollars and ninety-two cents and the mean total per diem rate for all NFs in the state for fiscal year 2002, weighted by medicaid days and calculated as of July 1, 2001, excluding providers of outlier services, under rules 5101:3-3-40 to 5101:3-3-59 of the Administrative Code.
- (C) If the mean total per diem rate for all NFs in the state for fiscal year 2002 or 2003, weighted by medicaid days and calculated under rules 5101:3-3-40 to 5101:3-3-59 of the Administrative Code as of the first day of July of the calendar year, excluding providers of outlier services, in which the fiscal year begins, exceeds the amount specified for that fiscal year in paragraph (A) or (B) of this rule, the department of job and family services shall reduce the total per diem rate for each NF in the state by a percentage that is equal to the percentage by which the mean total per diem rate exceeds the amount specified in paragraph (A) or (B) of this rule for the entire fiscal year.
- (D) For fiscal year 2004, the mean total per diem rate for all NFs in the state, weighted by May 2003 medicaid days and calculated as of July 1, 2003, excluding providers of outlier services, under rules 5101:3-3-40 to 5101:3-3-59 of the Administrative Code, shall not exceed one hundred fifty-six dollars and sixty-eight cents.
- (E) For fiscal year 2005, the mean total per diem rate for all NFs in the state, weighted by May 2004 medicaid days and calculated as of July 1, 2004, excluding providers of outlier services, under rules 5101:3-3-40 to 5101:3-3-59 of the Administrative Code, shall not exceed one hundred fifty-nine dollars, plus any difference between one hundred fifty-six dollars and sixty-eight cents and the mean total per diem rate for all NFs in the state for fiscal year 2004, weighted by medicaid days and calculated as of July 1, 2003.

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TN #02-027 EFFECTIVE DATE 07/01/03

5101:3-3-57

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(F) If the mean total per diem rate for all NFs in the state for fiscal year 2004 or 2005, weighted by medicaid days and calculated under rules 5101:3-3-40 to 5101:3-3-59 of the Administrative Code as of the first day of July of the calendar year, excluding providers of outlier services, in which the fiscal year begins, exceeds the amount specified for that fiscal year in paragraph (D) or (E) of this rule, the department of job and family services shall reduce the total per diem rate for each NF in the state by a percentage that is equal to the percentage by which the mean total per diem rate exceeds the amount specified in paragraph (D) or (E) of this rule for the entire fiscal year.

~~(D)~~(G) Subsequent to any reduction required by ~~paragraph~~ paragraphs (A), ~~(B)~~, or ~~(C)~~ to (F) of this rule, a NF's rate shall be subject to any adjustments required or authorized by rules 5101:3-3-40 to 5101:3-3-59 of the Administrative Code during the remainder of the fiscal year.

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SUPERSEDES

TN #02-022 EFFECTIVE DATE 07/01/03

5101:3-3-57

Effective:

Certification

Date

Promulgated Under: 119.03
Statutory Authority: RC Section 5111.02
Rule Amplifies: RC Section 5111.02,
5111.20-5111.32, Section 10
of Am. Sub. H.B. 94 of the
124th General Assembly,
Section 63.35 of Am. Sub.
S.B. 261 of the 124th General
Assembly, Section 59.36 of
Am. Sub. H.B. 95 of the
125th General Assembly

Prior Effective Dates: 9/30/01

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SUPERSEDES

TN #~~03-022~~ EFFECTIVE DATE 07/01/03

5101:3-3-82.3

Calculation, billing, collection and appeal process for the franchise permit fee (FPF).

(A) Calculation of the FPF

- (1) For those intermediate care facilities for the mentally retarded (ICFs-MR) referenced in rule 5101:3-3-82.2 of the Administrative Code, the FPF shall be calculated as follows: number of beds certified, multiplied by the number of days in the fiscal year, multiplied by the per bed FPF rate. The per bed FPF rate for fiscal years 2004 and 2005 shall be nine dollars and sixty-three cents. ~~To determine the per bed FPF rate, for each fiscal year the Ohio department of job and family services (ODJFS) shall, by July first,~~ The Ohio department of job and family services (ODJFS) shall beginning July 1, 2005 and the first day of July thereafter, adjust the product of the previous fiscal year's FPF rate by the twelve-month inflation factor.
- (2) ODJFS shall estimate a one year inflation factor using the "consumer price index for all urban consumers" for nonprescription drugs and medical supplies, as published by the United States bureau of labor statistics. The inflation factor shall cover the twelve month period beginning from the midpoint of the prior fiscal year to the midpoint of the subsequent fiscal year.

(B) Billing for the FFP

- (1) By August first each year ODJFS shall compile a list of all certified ICF-MR facilities current as of the preceding May first. This list shall include the name and address of each facility, number of certified beds, medicaid provider number assigned by ODJFS and the ODH home number.
- (2) By August fifteenth of each year, ODJFS shall determine the annual FPF for each medicaid-certified ICF-MR in accordance with this rule.
- (3) By September first of each year, ODJFS shall notify each ICF-MR of the amount of the FPF.

(C) Collection of the FPF

The FPF is payable in four quarterly installments with the first installment for the state fiscal year due on or before November fourteenth. The three remaining installments are due on or before February fourteenth, May fifteenth and August fourteenth. All checks, money orders, and other payment forms must carry the

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provider fee number of the facility originally assessed the FPF, be made payable to: "Treasurer of State of Ohio," and be mailed to the Ohio Department of Job and Family services, Dept. 633; Columbus, Ohio 43265.

- (1) If an FPF payment is not received on or before the payment due date, ODJFS may collect the FPF and any applicable penalties from any operator, or any entity responsible for the FPF as indicated in applicable agreements between operators, which is or was responsible for the facility operation during or after the quarter for which the installment payment was due.
 - (2) In the event of a closure the remainder of the FPF for the fiscal year, assessed prior to the closure, is a payable debt and if unpaid will be referred to the Ohio attorney general's office for collection.
 - (3) Payments for all FPF assessments are tracked by the provider fee number of the facility which was originally billed for the FPF.
 - (4) An ICF-MR assessed the FPF under rule ~~5101:3-3-49-2~~5101:3-3-82.2 of the Administrative Code shall not directly bill the residents for the FPF.
- (D) ODJFS may establish an electronic method to collect the FPF from each ICF-MR by deducting the amount due from the facility's medicaid vendor payment. ODJFS shall notify the affected facilities in writing sixty days prior to initiation of electronic collection of the FPF.

(E) Appeal of the FPF

- (1) The FPF may be appealed only on the basis that ODJFS committed a calculation error in determining the FPF. Before requesting an appeal, the facility should contact ODJFS, office of Ohio health plans (OHP), bureau of long term care facilities (BLTCF), facility contracting section (FCS), to discuss the problem. If the problem cannot be resolved informally, the facility shall file an appeal in accordance with the following procedures:
 - (a) The appeal shall be in writing and must be received by ODJFS not later than fifteen days after the date on which the FPF assessment notice was mailed; and
 - (b) The appeal shall be addressed to the "Office of Ohio Health Plans, Bureau of Long Term Care Facilities, 30 East Broad Street, 33rd Floor, Columbus Ohio ~~43266-0423~~43215-3414. Attention: Franchise Permit Fee Appeals;" and

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- (c) The appeal shall indicate that it is an appeal of the FPF due to an error in the calculation of the FPF; and
 - (d) The appeal shall include a detailed explanation of the error and the proposed corrected calculation; and
 - (e) The appeal shall include references to the relevant sections of the Revised Code and/or Administrative Code rules to support of the position of the appeal.
- (2) Upon receiving a timely request for an appeal, ODJFS shall conduct a public hearing in Columbus not later than thirty days after the request for appeal has been received. At this hearing a review to determine the validity of the FPF calculation will be conducted. At least ten days prior to the date of the hearing, ODJFS shall; notify the ICF-MR of the time, date and location of the public hearing. If the representative of a facility is unable to attend a hearing, the representative shall, at least five days prior to the scheduled hearing, request a tele-conference hearing.
- (3) ODJFS may adjust an ICF-MR FPF based on the evidence presented at the hearing. The decision of ODJFS is final.

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5101:3-3-82.3

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Effective:

Certification

Date

Promulgated Under: 119.03
Statutory Authority: RC Section 5112.39
Rule Amplifies: RC Sections 5112.30,
5112.31, 5112.32, 5112.33,
5112.34, 5112.35, 5112.37,
5112.38, 5112.39
Prior Effective Dates: 9/30/93 (Emer.), 1/1/94,
1/12/96, 2/11/02

APR .04
IN #03-018 APPROVAL DATE _____
SUPERSEDES
TN #02-022 EFFECTIVE DATE 07/01/03

5101:3-3-90

Intermediate care facilities for the mentally retarded
(ICFs-MR) expenditure limitation.

Notwithstanding rules 5101:3-3-75 to 5101:3-3-92 of the Administrative Code, "total per diem rate" includes the payments to ICFs-MR, excluding state-operated ICFs-MR, under the medicaid program subject to the following limitations:

- (A) For fiscal year 2004, the mean total per diem rate for all ICFs-MR in the state, weighted by May 2003 medicaid days and calculated as of July 1, 2003, excluding state-operated ICFs-MR, under rules 5101:3-3-75 to 5101:3-3-92 of the Administrative Code, shall not exceed two hundred twenty-one dollars and forty-three cents.
- (B) For fiscal year 2005, the mean total per diem rate for all ICFs-MR in the state, weighted by May 2004 medicaid days and calculated as of July 1, 2004, excluding state-operated ICFs-MR, under rules 5101:3-3-75 to 5101:3-3-92 of the Administrative Code, shall not exceed two hundred twenty-five dollars and eighty-six cents.
- (C) If the mean total per-diem rate for all ICFs-MR in the state for fiscal year 2004 or 2005, weighted by medicaid days and calculated under rules 5101:3-3-75 to 5101:3-3-92 of the Administrative Code as of the first day of July of the calendar year, excluding state-operated ICFs-MR, in which the fiscal year begins, exceeds the amount specified for that fiscal year in paragraph (A) or (B) of this rule, the department of job and family services shall reduce the total per diem rate for each ICF-MR in the state by a percentage that is equal to the percentage by which the mean total per diem rate exceeds the amount specified in paragraph (A) or (B) of this rule for the entire fiscal year.
- (D) Subsequent to any reduction required by paragraph (A), (B), or (C) of this rule, an ICF-MR's rate shall be subject to any adjustments required or authorized by rules 5101:3-3-75 to 5101:3-3-92 of the Administrative Code during the remainder of the year.

5101:3-3-90

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Effective:

Certification

Date

Promulgated Under: 119.03
Statutory Authority: RC Section 5111.02
Rule Amplifies: RC Section 59.36 of Am.
Sub. H.B. 95 of the 125th
General Assembly

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SUPERSEDES
TN # NEW EFFECTIVE DATE 07/01/03